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10/814,945	03/31/2004	Paul Jolicœur	SSP-34145	8340
22202 7590 11/26/2008 WHYTE HIRSCHBOECK DUDEK S C INTELLECTUAL PROPERTY DEPARTMENT 555 EAST WELLS STREET, SUITE 1900 MILWAUKEE, WI 53202				
EXAMINER				
GILBERT, WILLIAM V				
ART UNIT		PAPER NUMBER		
3635				
MAIL DATE		DELIVERY MODE		
11/26/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/814,945

**Applicant(s)**

JOLICOEUR ET AL.

**Examiner**

William V. Gilbert

**Art Unit**

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-11, 13-24, 26 and 28-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-11, 13-24, 26 and 28-62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date 9/29/08
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

This is a first action following a request for continued examination. Claims 1, 12, 25 and 27 have been cancelled. Claims 2-11, 13-24, 26 and 28-62 are pending and examined.

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 28 July 2008 has been entered.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

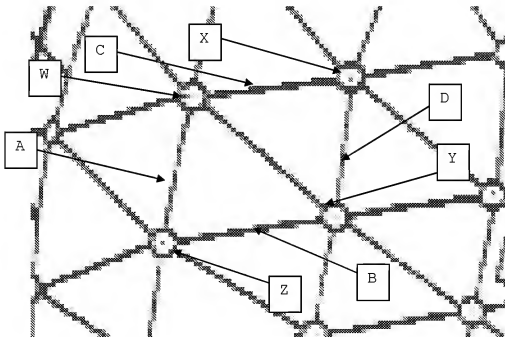
A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 2, 4-9, 11, 13-20, 22-24, 26, 28, 29, 30-48 and 53-55** are rejected under 35 U.S.C. 102(b) as being anticipated by Harper (U.S. Patent No. 4,244,152).

Independent Claim 11: Harper discloses a work platform support system having a plurality of joists (14) and a plurality of hubs (12) the joists have four joists ("A", "B", "C" and "D", respectively from attached Figure 2 from Harper below) and four hubs ("W", "X", "Y" and "Z", respectively below), one joists and two hubs are stationary ("A", "W" and "Z") and two of the joists are rotatable ("B" and "C"; the joists are rotatable in that they have the capability to rotate) and two hubs and one joist ("X", "Y" and "D") are translatable (the hubs and joist are translatable in that they are capable of translation) and the two rotatable joists, translatable hubs and translatable joist can articulate from an initial position to a final position with respect to the stationary joist and stationary hub so as to receive a work platform (26), and the joists are substantially co-planar with respect to each other as shown (applicant should respectfully note that a "work platform" can comprise a single set of joists and hubs as claimed.) Applicant should also respectfully note that claims drawn to "translation", "rotation", "pivoting" and "articulation" are met by the prior art of record in that while the joists are attached to the hubs,

the resulting connection permits translation, rotation, pivoting and articulation, no matter how minimal. Further, applicant has not defined what the initial and final positions are, so the examiner interpreted the final position as the final installed position, and the initial position is a position that just precedes it.



**Figure 2 from Harper**

Claim 2: the joists are bar joists.

Claim 4: the joists are shaped steel (Col. 5, lines 10-15).

Claim 5: a suspension connector (300) is connected to the hub.

Claim 6: the phrase "capable of being articulated" is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 7: the hubs have a plurality of openings to receive the joists (see "J" and "K" from attached Figure 4 from Harper below.)

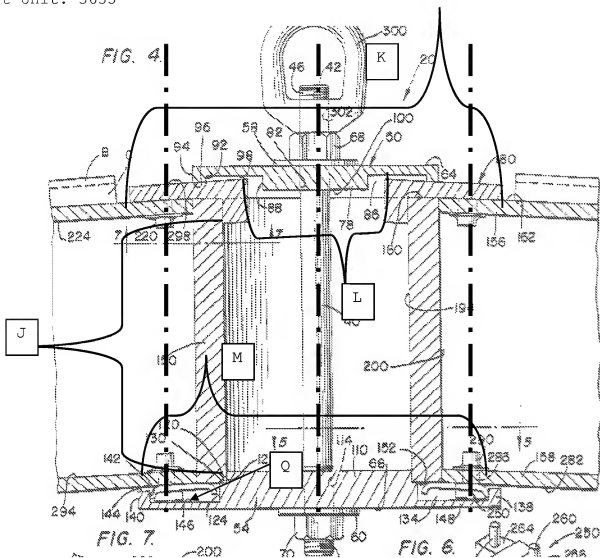


Figure 4 from Harper

Claim 8: the openings constitute a slot.

Claim 9: a work platform (26).

Claim 13: at least one hub has a first set of openings (114, "M" from attached Figure 4, above), a second surface parallel to the first surface having a second set of openings (proximate "K", "L" above) a structural element (150)

interspersed between the first and second surfaces, and as shown, the first set of openings is co-axial with a respective one of the openings in the second set (see heavy dashed line in Fig. 4, above). The phrase "adapted to provide an articulation...at least one joist", lines 7 and 8, is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 14: the first surface is substantially planar.

Claim 15: the second surface is substantially planar.

Claims 16-18: the structural element is a right circular cylinder and the longitudinal axis is normal to the first and second surfaces.

Claim 19: the first and second surface interconnect with at least one joist.

Claim 20: the surface has a support opening (100) configured to receive an attachment means (300).

Claim 22: the support opening is a slot.

Claim 23: Harper discloses four hubs ("W"- "Z" above) and four joist mechanisms ("A"- "D" above) interconnected with the hubs, one joist ("A") and two hubs ("W", "Z") are stationary,



two joists are rotatable ("B", "C"), two hubs and one joist are translatable ("X", "Y", "D") and the mechanism can articulate with respect to the stationary joist mechanism to receive a work platform (26), and the joists would be substantially co-planar with respect to each other in the initial and final positions. The phrase "can articulate...a work platform" line 14, is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See rejection of claim 11 for explanation of "initial" and "final" positions.

Claim 24: Harper discloses a plurality of joists ("A"- "D") and a plurality of hubs ("W"- "Z"), a suspension connector (300) for suspending the hub, one joist ("A") and two hubs ("W", "Z") are stationary, two joists are rotatable ("B", "C"), two hubs and one joist are translatable ("X", "Y", "D") and the mechanism can articulate with respect to the stationary joist mechanism to receive a work platform (26), and the joists would be substantially co-planar with respect to each other in the initial and final positions (see rejection of claim 11 for explanation of "initial" and "final" positions.) The phrase

"can articulate...a work platform" line 14, is a statement of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 26: Harper discloses a platform by providing four joists ("A"- "D") and four hubs ("W"- "Z") the hubs are pivotally attached (see rejection of Claim 1 above for explanation of terms such as "pivotally") to the joists such that one of the joists ("A") and two hubs ("W", "Z") are stationary, two joists ("B", "C") are rotatable, and two hubs and one joist ("X", "Y", "D") are translatable and there is articulation among the elements so as to receive a work platform (26), and the plurality of joists would be substantially coplanar with respect to each other in the initial and final positions. See rejection of claim 11 for explanation of "initial" and "final" positions.

Claim 28: hoisting equipment is not required as it may be done by hand.

Claim 29: the articulation (of "A"- "D" and "W"- "Z" alone) would result in a cantilever.

Claim 30: Harper discloses a work platform structure having first and second hubs ("W", "Z") connected by a first joist

("A"), a third hub ("X") connected to a fourth hub ("Y") using a second joist ("D") the third and fourth hubs are connected to the first and second hubs with third and fourth joists ("B", "C") there is articulation to receive a work platform (see rejection of claim 1, above for explanation), the joists are substantially perpendicular to the hubs (the connections are at approximately ninety degrees), and the joists would be coplanar in the initial and extended positions. Please note that the same argument for "initial and the final positions" applies to "initial and extended positions".

Claim 31: the fourth joist ("C") rotates with respect to the first hub.

Claim 32: the joist ("D") translates with the first joist.

Claim 33: the third joist ("B") pivots with respect to the third hub.

Claim 34: Harper discloses a first pair of hubs ("W", "Z") in a fixed relation with a first joist ("A") a second pair of hubs ("X", "Y") connected by a second joist ("D"), they are connected by third and fourth joists ("B", "C"), they articulate from an initial position to a final position with respect to the first pair of hubs and can receive a work platform (see rejection of claim 1, above for explanation), the

joists are substantially perpendicular and the joists are substantially co-planar.

Claim 35: the fourth joist ("C") rotates with respect to the first hub.

Claim 36: the joist ("D") translates with the first joist.

Claim 37: the third joist ("B") pivots with respect to the third hub.

Claim 38: Harper discloses a platform structure have a pair of hubs ("W", "Z") connected in fixed relation using a first joist ("A"), a second pair of hubs ("X", "Y") connected with a second joist ("D"), the pair are connected to third and fourth joists ("B", "C"), there is articulation to receive a work platform (26) (see rejection of claim 1, above for explanation), the joists are substantially perpendicular with respect to an axis of the respective hub (as shown), and the joists are substantially co-planar in the initial and final positions.

Claim 39: the fourth joist ("C") rotates with respect to the first hub, the joist ("D") translates with the first joist, and the third joist ("B") pivots with respect to the third hub.

Claim 40: Harper discloses a work platform structure having a first pair of hubs ("W", "Z") in a fixed connection by a first joist ("A") a rotatable second joist ("B") connected to one of the first hubs, a rotatable third joist ("C") connected to the

other of the first hubs) a third hub ("X") connected to the second or third joist and a fourth hub ("Y") connected to the other of the second or third joist a fourth joist ("D") connecting the third and fourth hubs, the joists and hubs articulate with respect to the first joist and hubs from an initial position to a final position in which a work platform can be supported, the hubs have a first set of openings (114, "M" from attached Figure 4, above), a second surface parallel to the first surface having a second set of openings (proximate "K", "L" above), a structural element (150) interspersed between the first and second surfaces, and as shown, the first set of openings is co-axial with a respective one of the openings in the second set (see heavy dashed lines in Fig. 4, above), and the joists are substantially co-planar with respect to each other in the initial and final positions.

Claim 41: the joist ("D") translates with the first joist.

Claim 42: the third joist ("C") pivots with respect to the third hub.

Claim 43: Harper discloses a structure having a first joist ("A") connected to a pair of hubs ("W", "Z"), second and third rotatable joists ("B", "C") and a translatable fourth joist ("D") the second third and fourth joists are connected by a pair of hubs ("X", "Y"), the joist assembly articulates with respect

to the first hub and joist assembly to receive a work platform the hubs have a first set of openings (114, "M" from attached Figure 4, above), a second surface parallel to the first surface having a second set of openings (proximate "K", "L" above) a structural element (150) interspersed between the first and second surfaces, and as shown, the first set of openings is co-axial with a respective one of the openings in the second set (see heavy dashed line in Fig. 4, above), and the joists are substantially co-planar with respect to each other in the initial and final positions.

Claim 44: the third joist ("C") pivots with respect to the third hub.

Claim 45: first and second hubs ("W", "Z") are connected using a first joist ("A"), third and fourth hubs ("X", "Y") are connected by a second joist ("D") the hubs are connected by third and fourth joists ("B", "C"), articulation is involved among the joists and hubs with relation to each other to receive a work platform (see rejection of claim 1 for explanation of "articulation" with respect to the limitation), the hubs have a first set of openings (114, "M" from attached Figure 4, above), a second surface parallel to the first surface having a second set of openings (proximate "K", "L" above) a structural element (150) interspersed between the first and second surfaces, and as

shown, the first set of openings is co-axial with a respective one of the openings in the second set (see heavy dashed line in Fig. 4, above), and the joists are substantially co-planar with respect to each other in the initial and final positions

Claim 46: the third joist ("B") rotates with respect to the first or second hub ("W", "Z"; see rejection of claim 1 for explanation of "rotation".)

Claim 47: the joist ("D") translates with respect to the first joist ("A"; see rejection of claim 1 for explanation of "translation".)

Claim 48: the fourth joist ("C") pivots with respect to the third and fourth hubs (see rejection of claim 1 for explanation of "pivot".)

Claim 53: as shown the joists extend substantially perpendicularly with respect to an axis of hubs.

Claim 54: the hubs have a first set of openings (114, "M" from attached Figure 4, above), a second surface parallel to the first surface having a second set of openings (proximate "K", "L" above) a structural element (150) interspersed between the first and second surfaces, and as shown, the first set of openings is co-axial with a respective one of the openings in the second set (see heavy dashed lines in Fig. 4, above).

Claim 55: the joists extend substantially perpendicularly with respect to an axis of the hubs about which the joists rotate.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.



**Claim 3** is rejected under 35 U.S.C. 103(a) as being unpatentable over Harper in view of Strickland (U.S. Patent No. 5,771,655)

Claim 3: Harper discloses the claimed invention except that the joists are open-web joists. Strickland discloses a frame system with open-web joists (Fig. 3, generally). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use open web joists with the system in Harper to reduce the overall weight of the structure while still maintaining proper performance.

**Claims 10 and 21 and 49-52** are rejected under 35 U.S.C. 103(a) as being unpatentable over Harper in view of Lewis (U.S. Patent No. 748,962).

Claims 10 and 21: Harper discloses the claimed invention except that the suspension connector (or attachment means) is a chain. Lewis discloses a connector is a chain (4). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the chain as attachment means because a lifting mechanism can be used in Harper in conjunction with the lifting eye lifting eye (300) and the chain would provide adequate lifting.

Claim 49: Harper discloses a method of assembly by providing a plurality of joists ("A"- "D") and hubs ("W"- "Z") that are connected to each other, articulating from an initial position to a final position, the articulating includes rotating, translating the joists with respect to the hubs (see rejection of claim 1, above for explanation), a suspension mechanism (300) is connected to the platform and the mechanisms are substantially coplanar in initial and final positions, but suspension of the platform is not disclosed. Lewis discloses a connector is a chain (4) that would be used to suspend the platform. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the chain as attachment means because a lifting mechanism could be used in Harper for the lifting eye (300) and the chain would provide adequate lifting.

Claim 50: the mechanism would be cantilevered ("A"- "D" and "W"- "Z"; before being attached to the other joists and hubs.)

Claims 51 and 52: the method is done at least twice to assemble a work platform (Harper: Fig. 2, generally.)

**Claims 56-62** are rejected under 35 U.S.C. 103(a) as being unpatentable over Harper.

Claims 56, 58, 61 and 62: Harper discloses providing a plurality of four hub mechanisms ("W-Z" above), the hubs have a first set of openings (114, proximate 290, "Q" and "M" from attached Figure 4, above), a second surface parallel to the first surface having a second set of openings (proximate "K", "L" above) a structural element (150) interspersed between the first and second surfaces, and as shown, one of the first set of openings is co-axial with a respective one of the openings in the second set (see heavy dashed line in Fig. 4, above), and the joists are substantially co-planar with respect to each other in the initial and final positions, providing at least four joist mechanisms ("A-D" above), the joists are substantially perpendicular with respect to an axis of the hub mechanisms, and a work platform (26) is placed on the mechanisms and the mechanisms are substantially co-planar in initial and final positions. In additions the joists are connected to the hubs, and rotation is permitted (regardless of the level of rotation), and the joists are attached to the hubs via a fastening means (290) through an opening ("Q" above) at one end of the joist and the coaxial opening the in set of openings. While an initial and final position do exist in Harper as an inherent feature (the initial position could be considered virtually any position prior to final installation), Harper does not disclose that the

articulation includes actual rotating, pivoting or translating. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the limitations as claimed because it would be well within the level of skill in the art to rotate, pivot or translate one member with respect to another in order to insure that the members fit together properly.

Claim 57: the articulation (of "A"- "D" and "W"- "Z" alone) would result in a cantilever.

Claim 59: the prior art of record discloses the claimed invention except for the design criteria. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have this limitation because optimizing an invention will not support patentability of subject matter encompassed by the prior art unless there is evidence indicating such a limitation is critical. See M.P.E.P. §2144.05 "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454 (CCPA 1955) (Claimed process which was performed at a temperature between 40C and 80C and an acid concentration between 25% and 70% was held to be *prima facie* obvious over a reference process which differed from the claims

only in that the reference process was performed at a temperature of 100C and an acid concentration 10%.) It is well known in the art to design structures in accordance with testing standards to avoid failure, so if one of ordinary skill in the art desired that a structure withstand a certain load, then it would be well within reason to design the structure to withstand that load.

Claim 60: if the joists and hubs were connected as claimed, the result would be a cantilever action. To have the assembly not require the use of hoisting equipment is obvious to one of ordinary skill in the art as one can assemble enough people to assemble the structure without the use of hoisting equipment.

#### ***Response to Arguments***

4. The following addresses applicant's remarks arguments dated 28 July 2008:

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection as applicant amended the claims.

Regarding applicant's arguments addressing the openings in the hubs, see explanation above, which shows how the prior art

of record anticipates (or is obvious in light of) the limitations as claimed. Further, while applicant provides a limitation of "an initial and final position", applicant has respectively not provided the metes and bounds of these limitations. In other words, based on the claim, it is unclear to the examiner as to what the initial position and final position are, so the examiner defined the initial and final positions as noted above.

Further, applicant's argument that the Harper reference (cited above) is not coplanar is, respectively, not persuasive. First, applicant claims that the mechanisms are "substantially coplanar" (e.g. Claim 11, last paragraph). The limitation "substantially coplanar" and "coplanar" are not the same as "substantially coplanar" includes members that may not otherwise be coplanar, but are close to being coplanar. In addition, the "substantially coplanar" limitation applies to four hubs and four mechanisms (as claimed), not the entire structure in Harper. Though it may be arguable that the entire structure in Harper may not be coplanar (the examiner is, respectfully, not conceding this point), the examiner maintains the position that a single section comprising four joists and four hubs as claimed and as shown is substantially coplanar. This same argument applies to applicant's limitation of "substantially

perpendicular" (e.g., claim 30, fourth paragraph). Applicant argues that the objects are not "perpendicular", but the claimed limitation at issue is "substantially perpendicular".

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/W. V. G./  
Examiner, Art Unit 3635  
/Basil Katcheves/  
Primary Examiner, Art Unit 3635